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The right to development

Report of the Secretary-General

Summary

The present report contains an overview of the activities of the Office of the United Nations High Commissioner for Human Rights relating to the promotion and realization of the right to development, including in the context of the twenty-fifth anniversary of the United Nations Declaration on the Right to Development. The report also presents a compilation of the conclusions and recommendations adopted by consensus by the Working Group on the Right to Development, of the Human Rights Council, with a view to contributing to intergovernmental deliberations on the future course of action in the effective implementation of the right to development.

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I. Introduction

1. In its resolution 65/219, the General Assembly requested the United Nations High Commissioner for Human Rights, in mainstreaming the right to development, to undertake activities to strengthen the global partnership for development and to reflect those activities in detail in her next report to the Human Rights Council. In the same resolution, the Assembly requested the Office of the United Nations High Commissioner for Human Rights (OHCHR), in consultation with Member States and other relevant stakeholders, to launch preparations for the commemoration of the twenty-fifth anniversary of the Declaration on the Right to Development in 2011 and also requested the Secretary-General to submit a report to the Assembly at its sixty-sixth session, as well as an interim report to the Human Rights Council, on the implementation of the resolution, including efforts undertaken at the national, regional and international levels in the promotion and realization of the right to development. The present report, which is submitted in accordance with the above-mentioned requests and, in accordance with established practice, represents a consolidated report of the Secretary-General and the United Nations High Commissioner for Human Rights on the right to development.

II. Activities of the Office of the United Nations High Commissioner for Human Rights

2. As requested by the General Assembly in its resolution 65/219 and by the Human Rights Council in its resolution 15/25, OHCHR, in consultation with Member States and other relevant stakeholders, has launched a programme for the commemoration of the twenty-fifth anniversary of the Declaration on the Right to Development and has elaborated a calendar of events and activities.[1]

3. In February 2011, in Berlin, in her keynote address at an inaugural event to mark the twenty-fifth anniversary of the Declaration on the Right to Development, entitled "25 years of the right to development: achievements and challenges", the United Nations High Commissioner for Human Rights linked the popular uprisings in North Africa and the Middle East to the denial of people's right to development. At an expert symposium which was part of the event, three challenges to the realization of the right to development were identified: the impasse in the intergovernmental debate; the need to mainstream the right to development in the work of the United Nations system; and the need to build a broader right-to-development constituency.[2]

4. On the occasion of the Fourth United Nations Conference on the Least Developed Countries held in Istanbul in May 2011, the High Commissioner observed that human rights, including the right to development, were central to the course of development envisaged for the least developed countries; highlighted the twenty-fifth anniversary of the Declaration on the Right to Development as an opportunity to reinvigorate partnerships to build an enabling environment for development, inclusive of human rights principles; stressed the linkages between development, poverty reduction and gender equality and the contribution of women

[1] See http://www.ohchr.org/EN/Issues/Development/Pages/Calendarofevents.aspx.

[2] See http://library.fes.de/pdf-files/iez/08156.pdf; http://www.ohchr.org/EN/NewsEvents/Pages/DevelopmentHumanRightForAll.aspx; and http://www.fes.de/gpol/en/RTD_conference.htm.

to development; and reaffirmed the commitment of OHCHR to support the human rights-based development of the least developed countries.

5. At the fourteenth session of the Human Rights Council, the High Commissioner expressed the hope that the next phase of deliberations on the right to development would continue to focus on the improvement in human well-being and the empowerment of individuals and communities to fully participate in making the important choices that affect them. The High Commissioner underlined the centrality of equality of opportunity and international cooperation. At the Council's sixteenth session, the High Commissioner stressed that the promotion and realization of the right to development remained a key dimension of OHCHR's work.

6. Also in 2011, OHCHR published a booklet version of the Declaration on the Right to Development and produced a poster and information notes on the right to development.

7. The Committee on Economic, Social and Cultural Rights, in a statement on the importance and relevance of the right to development adopted in May 2011, resolved to continue monitoring the implementation of all the rights protected under the International Covenant on Economic, Social and Cultural Rights, which also contribute to the full realization of the relevant elements of the right to development (see E/C.12/2011/2). Similarly, the Chairs of the United Nations human rights treaty bodies, in a statement adopted in July 2011, resolved to make a concerted effort to promote a development-based and interdependent reading of all human rights treaties in order to highlight and emphasize the relevance and importance of the right to development in interpreting and applying human rights treaty provisions and in monitoring compliance with them.[3]

8. At a special event of the Economic and Social Council on the right to development and global partnership for development held at the Council's substantive session in July 2011, views were exchanged on how the promotion of the right to development and the achievement of Millennium Development Goal 8 can reinforce each other and how the United Nations system can use these synergies in the perspective of 2015 and beyond.[4]

9. At the public forum organized by the World Trade Organization in September 2010, OHCHR co-sponsored a panel discussion on the right to development together with the non-governmental organization 3D as a tool to boost coherence between trade, development and human rights. The panel underlined the need for global institutions to ensure convergence among different interests; policy space; and policies to enhance production capacities and economic diversification.

[3] See http://www2.ohchr.org/english/bodies/treaty/index.htm.

[4] See http://www.ohchr.org/EN/Issues/Development/Pages/RtDandGlobalPartnershipforDevelopment.aspx.

III. Compilation of conclusions and recommendations adopted by consensus by the Working Group on the Right to Development of the Human Rights Council

10. Section III contains a compilation of the conclusions and recommendations adopted by consensus by the Working Group on the Right to Development[5] during the period from 1998 to 2010.[6]

A. The concept and the realization of the right to development

11. The Declaration on the Right to Development, adopted by the General Assembly in 1986 in its resolution 41/128, defines the right to development as an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. It recognizes that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement in the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and at the fair distribution of benefits resulting therefrom. In order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.

12. The right to development embodies the human rights principles of equality, non-discrimination, participation, transparency and accountability as well as

[5] The Working Group was established by Commission on Human Rights resolution 1998/72, and endorsed by Economic and Social Council decision 1998/269, with the mandate to monitor and review progress made in the promotion and implementation of the right to development, as elaborated in the Declaration on the Right to Development, at the national and international levels, providing recommendations thereon and further analysing obstacles to its full enjoyment, focusing each year on specific commitments in the Declaration; to review reports and any other information submitted by Member States, United Nations agencies, other relevant international organizations and non-governmental organizations on the relationship between their activities and the right to development; and to present for the consideration of the Human Rights Council a sessional report on its deliberations, including advice to OHCHR with regard to the implementation of the right to development, and suggesting possible programmes of technical assistance at the request of interested countries with the aim of promoting the implementation of the right to development.

[6] Since its inception in 1998 the Working Group has held 11 sessions. It adopted its conclusions and recommendations by consensus, except at its first, second and fourth sessions, which ended with conclusions presented by the respective chairs. These are not reflected in the present summary. The summary focuses on those conclusions and recommendations related to substantive issues, as opposed to procedural questions, unless the latter were relevant to the substantive issue under consideration. It shall be noted, that the Working Group, at its fifth session, took note of the following positions of delegations, which were not meant to block consensus by the Working Group: Japan reserved its position on trade and debt relief, but joined the consensus; Australia, Canada and the United States of America dissociated themselves from the consensus (E/CN.4/2005/25, para. 32). On other occasions, several States and groups presented explanations of their positions with regard to the conclusions and recommendations after their adoption (see for example E/CN.4/2006/26, para. 28, A/HRC/4/47, para. 47, A/HRC/9/17, para. 37 and A/HRC/12/28, para. 39).

international cooperation. The basic requirements of the Declaration on the Right to Development are:

(a) Putting people at the centre of development;

(b) Ensuring free, active and meaningful participation;

(c) Securing non-discrimination;

(d) Fairly distributing the benefits of development;

(e) Respecting self-determination and sovereignty over natural resources;

(f) Ensuring that the right to development is part of a process that advances other civil, political, economic, social and cultural rights.

The concept of the right to development

13. In its deliberations, the Working Group on the Right to Development has concluded that possible nuances in the use of terminology in discussions on the right to development "have no bearing on the right to development as embodied in the Declaration on the Right to Development" and that all stakeholders — Member States, experts, development practitioners, international institutions and civil society should move towards a common understanding of the substantive components of the right to development regardless of such nuances (see E/CN.4/2005/25, para. 38).

14. In addition, the Working Group agreed that a "rights-based approach to economic growth and development contributes to the realization of the right to development while it does not exhaust its implications and requirements at both national and international levels" (see E/CN.4/2005/25, para. 46).

15. While recognizing that "sustained economic growth is an indispensable component of the realization of the right to development" (E/CN.4/2004/23 and Corr.1, para. 43), the Working Group has concluded that "development has to be grounded in economic policies that foster growth with social justice," and that "the need to build synergies between growth-oriented development strategies and human rights is a response to the growing call by people for more empowerment, more ownership and more sustainability in development efforts" (E/CN.4/2005/25, para. 42). Furthermore, the Working Group has taken note of the fact that the right to development enriches growth-oriented development strategies through systematically incorporating human rights and the principles of transparency, equality, participation, accountability and non-discrimination into the development processes, at both national and international levels. In that context, the right to development should act as a guide in setting priorities and resolving trade-offs in resource allocations and policy frameworks (E/CN.4/2005/25, para. 43).

16. The Working Group in recalling "the principles that underlie the right to development, namely equality, non-discrimination, participation, transparency and accountability, as well as international cooperation" has attached particular importance to the principle of equity, the rule of law and good governance, at all levels, as being central to the realization of the right to development (E/CN.4/2006/26, para. 40).

The realization of the right to development

17. While the Working Group has, on occasion, addressed the responsibility of States for the creation of national as opposed to international conditions favourable to the realization of the right to development as separate issues in general it has stressed the link between them (see E/CN.4/2002/28/Rev.1, paras. 95, 96, 103 and 104). With regard to the creation of favourable international conditions, the Working Group has recognized that "there is growing acceptance of the simultaneous levels of action required at the national, regional and international levels in the implementation of the right to development. While the importance of the implementation of the right to development by States cannot be overemphasized, this does not in any way reduce the importance of international cooperation in providing an enabling environment at the international level (E/CN.4/2006/26, para. 32).

18. Recognizing that international cooperation is one of the international commitments stated in the Declaration on the Right to Development, the Working Group has also identified it as a duty that is entrenched in the Charter of the United Nations and manifested in mutual commitments, which translate the general duty of international cooperation into specific binding arrangements between cooperating partners (E/CN.4/2006/26, para. 37).

19. In addition, while understanding that international cooperation has various aspects and modalities, the Working Group has stressed that multilateral cooperation and other forms of cooperation, such as partnership, commitment and solidarity, including South-South cooperation, are also important (E/CN.4/2002/28/Rev.1, para. 102).

20. The Working Group has expressed the opinion that the changing global context requires a well-coordinated approach to development cooperation that ensures improved coordination, stronger partnerships, results-based approaches and greater coherence in implementing the consensus on development goals as a concrete step towards building partnerships for the realization of the right to development [...] and has noted that mutual commitments can lead to specific binding arrangements between cooperating partners, defined and agreed upon through genuine negotiations, so as to ensure national ownership of the development process (E/CN.4/2005/25, para. 44).

21. While referring to the realization of the right to development, the Working Group repeatedly used the qualification "progressively". In 2004, for example, the Working Group agreed that progressive realization of the right to development needed a clear vision, enhanced coherence, effective coordination of policies and programmes, a credible review process, constant assessment and political commitment at the national and international levels (E/CN.4/2004/23 and Corr.1, para. 43 (h)).

22. Among the factors explicitly recognized as contributing to the realization of the right to development were: an open, equitable, rules-based, predictable and non-discriminatory multilateral trading system; sustained economic growth; continued partnerships; the evolution, assessment and dissemination of practical and specific measures at the national and international levels; adherence to the principles underlying the Declaration on the Right to Development as guides to the policies and programmes of the multilateral development and financial institutions;

a rights-based approach to economic growth and development; good governance and the rule of law at both national and international levels; responsiveness on the part of States to vulnerable and marginalized groups and the realization of civil, cultural, economic, political and social rights (see E/CN.4/2002/28/Rev.1, E/CN.4/2004/23 and Corr.1, E/CN.4/2005/25 and E/CN.4/2006/26). Additional components of the realization of the right to development identified included: institutional infrastructure; coherence and cooperation in policy and programme development; human resources development; public finance and administration; financial regulation and supervision; basic education; social- and gender-sensitive budget policies; rule of law and the judicial system; appropriate technological development and crisis prevention; technical assistance, capacity-building and information sharing to assist developing countries in their efforts; and the identification and analysis of obstacles impeding the full realization of the right to development at both the national and international levels.

23. The Working Group has agreed that knowledge and best practices, including practical and specific measures, on implementing the right to development needed to be shared and made more accessible to people and institutions through the collection and dissemination of good practices and success stories through a broad-based collaborative effort by the various stakeholders at the national and the international levels (E/CN.4/2004/23 and Corr.1, para. 43, and E/CN.4/2005/25, para. 36).

24. The Working Group did not see itself as a substitute for multilateral negotiations in areas where other international organizations were mandated to act, although it considered itself competent to send out a strong message in all areas where the existing system impacted adversely on the realization of the right to development for all in the hope that, in doing so, the concerned organizations would take all necessary steps to remedy the existing situation (E/CN.4/2002/28/Rev.1, para. 101). The focus of the Working Group and of its follow-up actions would therefore be on the mainstreaming and implementation of the right to development, as established in the Declaration, since, in order for it to be understood at the global level, it had to be integrated coherently into the operational activities, policies and programmes of all relevant development agencies, international financial and trade institutions and national Governments (see E/CN.4/2004/23 and Corr.1, paras. 42 and 43).

25. The Working Group also emphasized the issue of policy coherence, noting that States, while adopting agreements and making commitments at international forums, such as in the context of the World Trade Organization, as well as in the implementation of Millennium Development Goal 8, remained accountable for their human rights obligations. Ensuring policy coherence between a State's international human rights obligations and all its multilateral and bilateral trade and development engagements was, therefore, a central prerequisite of the right to development. In negotiating such engagements, Governments should comply with and ensure respect for their human rights obligations by applying a coherent and coordinated approach, integrating the right to development into national policies, including development strategies, at both the national and international levels (E/CN.4/2006/26, para. 41).

26. Given the fact that good governance and the rule of law at the national level assist all States in promoting and protecting human rights, including the right to development, the Working Group agreed on the added value of efforts by States to

identify and strengthen good governance practices, including transparent, responsible, accountable and participatory government, that are responsive and appropriate to their needs and aspirations, including in the context of agreed partnership approaches to development, capacity-building and technical assistance (E/CN.4/2002/28/Rev.1, para. 105 (e)).

27. In addition, the Working Group urged Governments to use, in a transparent and responsible manner, resources that may contribute to the realization of the right to development, whether from domestic or foreign sources. The Group also noted the need to encourage action against corruption at the national and international levels, including the need for genuine political commitment on the part of national Governments through a firm legal framework, including adherence to existing instruments dealing with corruption and support for other international legal efforts (E/CN.4/2002/28/Rev.1, para. 105 (g)).

28. With regard to the link between the international economic, commercial and financial spheres and the realization of the right to development, the Working Group highlighted the need to broaden the base of decision-making at the international level on issues of concern to development and to fill organizational gaps, to strengthen the United Nations system and the other multilateral institutions and to broaden and strengthen the participation of developing countries and economies in transition in international economic decision-making and norm-setting (E/CN.4/2002/28/Rev.1, para. 100 (b)). With regard to institutional asymmetries in global governance, the Working Group identified two widely acknowledged types of problems in the context of the periodic evaluation of Millennium Development Goal 8. The first concerned the growing imbalances in the monetary and financial systems that expose the global economy to shocks that are beyond any national capacity to control. The second was the asymmetry in decision-making and norm-setting in international trade and finance. The voting structures of the World Bank and the International Monetary Fund (IMF) were heavily weighted towards developed countries, based on their relative economic strength (E/CN.4/2006/26, para. 60). In this regard, the Working Group stressed the importance of the continuing efforts to reform the international financial architecture, which could also contribute to the realization of Goal 8, from the perspective of the right to development (E/CN.4/2006/26, para. 75).

Global and regional partnerships for development

29. The Working Group has paid particular attention to global partnerships. In 2004, it devoted a high-level seminar (see E/CN.4/2004/23/Add.1) to the topic. In 2005, it had requested the High-level Task Force on the Right to Development to examine Millennium Development Goal 8 and to suggest criteria for its periodic evaluation (E/CN.4/2005/25, para. 54 (i)). In 2006, the Working Group adopted a preliminary list of criteria for the evaluation of global partnerships (E/CN.4/2006/26, para. 67).

30. The Working Group has also stressed the need for partnerships with United Nations agencies and multilateral financial institutions, including existing partnerships such as the poverty reduction strategy papers and the United Nations Development Assistance Framework process, as well as the need for them to be nationally owned. In addition, the Working Group is convinced that development

partnerships should go beyond relationships between Governments and multilateral institutions to include civil society organizations (E/CN.4/2005/25, para. 45).

31. The importance of continued partnerships, within the framework of the Working Group, between the Commission on Human Rights and United Nations bodies, agencies, funds and programmes, multilateral financial and development institutions and the World Trade Organization, with a view identifying concrete measures to implement and mainstream the right to development, including inclusive dialogue among, and the constructive engagement of, all concerned parties, has been recognized (E/CN.4/2005/25, paras. 35 and 36).

32. While the Working Group was aware of gaps and inconsistencies in the practices of development partnerships in enhancing the effectiveness of global partnerships for the implementation of the right to development, it expressed the opinion that it was necessary to identify all dimensions of the principle of the right to development that could guide and complement the work of such partnerships (E/CN.4/2006/26, para. 39).

33. The Working Group also attached particular importance to regional initiatives for monitoring the realization of human rights, including the right to development, and stressed the potential value of such partnerships as a development compact that provided for the institutionalization of an inclusive participatory process and transparent public scrutiny, which were conducive to the right to development (E/CN.4/2006/26, para. 62).

34. Meeting the international community's commitment to address the special needs of Africa, including the New Partnership for Africa's Development as a development framework and a practical example of an initiative for the promotion of a rights-based approach to development, is an important discussion within the Working Group. The Working Group was of the opinion that the African Peer Review Mechanism could be an appropriate reporting mechanism for measuring progress towards the achievement of Millennium Development Goal 8, with a view to implementing the right to development. In this regard, States would need to incorporate in their national programmes of action that emerge from the Review Mechanism explicit criteria for capacity-building, resource allocation, monitoring and evaluation more directly aligned with the principles of the right (E/CN.4/2006/26, para. 63).

35. In acknowledging the work of the African Partnership Forum, the Working Group noted the importance of linking benchmarks for progress and performance against the commitments contained in the Africa Action Plan adopted by the Group of Eight at its 2002 summit, and supported by the African Charter on Human and Peoples' Rights and other regional instruments. Article 22 of the African Charter, the only legally binding provision on the right to development, could provide a basis for African countries to periodically assess the realization of the right to development in the African context. In other regions, a genuine peer review process, assessing the extent to which human rights have been part of the development process, would contribute significantly to the periodic evaluation of the right to development (E/CN.4/2006/26, paras. 63 and 64).

36. In addition, the Working Group welcomed the Salamanca Declaration and its additional statement on the achievement of the Millennium Development Goals as a

contribution to a strategic partnership for poverty reduction and the implementation of the right to development (E/CN.4/2006/26, para. 65).

Transnational corporations and corporate responsibility

37. The Working Group recognized the need for strong partnerships with the private sector at the national level in pursuing poverty eradication and development efforts, as well as the need for good corporate governance (E/CN.4/2002/28/Rev.1, para. 105 (f)). While acknowledging the potential positive and negative effects of transnational corporations and other business enterprises on the development efforts of host countries and the enjoyment of human rights, the Working Group recommended that transnational corporations should operate in a manner consistent with the domestic and international human rights obligations of the host countries and the countries of origin and that the elaboration of criteria should be considered for periodic evaluation of the effects of their activities (E/CN.4/2006/26, para. 56).

38. The Working Group stressed that monitoring of progress at all levels of action was needed on the basis of criteria of corporate responsibility and accountability, to be developed from a human rights perspective, and recommended that the periodic monitoring of the effects of the activities of transnational corporations on global partnerships for development should be attentive to the need for policy coherence and that it should also include a human rights perspective (E/CN.4.2006/26, paras. 58 and 73).

Parliaments, national institutions and civil society

39. The Working Group has encouraged States to strengthen national parliamentary mechanisms and legislative bodies, as well as civil society organizations and national human rights institutions, in order to play a more prominent role in the evaluation of Millennium Development Goal 8 from the perspective of the right to development (E/CN.4/2006/26, para. 70).

40. The Working Group also agreed that there is a need, at the national level, for strong partnerships with civil society organizations in poverty eradication and development efforts (E/CN.4/2002/28/Rev.1, para. 105 (f)).

B. Thematic issues

Globalization

41. At its third session, the Working Group noted that while globalization offered opportunities and challenges, the process of globalization remained deficient in achieving the objective of integrating all countries in a globalized world. It stressed that many developing countries had been marginalized, and others were at risk of marginalization, and stated its position that, if the process of globalization was to be made fully inclusive and equitable, there was a strong need for policies and measures, at the national and global levels alike, to respond to the challenges and the opportunities of globalization (E/CN.4/2002/28/Rev.1, para. 100 (a)).

42. At its fifth session the Working Group stated that in order for the globalization process to facilitate the realization of the right to development and to address the challenges it poses there is a need for an integrated approach to the implementation of national and international dimensions of the right to development and for the

identification and implementation of complementary measures at the national and the international levels (E/CN.4/2004/23 and Corr.1, paras. 43 (e) and (f)).

Poverty eradication

43. The Working Group has recognized that the eradication of poverty is a critical, though not the only step in the promotion and realization of the right to development. Poverty is a multifaceted problem requiring a multifaceted approach to address the economic, political, social, environmental and institutional dimensions of poverty, especially in the context of the Millennium Development Goal of halving, by 2015, the proportion of the world's people whose income is less than one dollar a day and the proportion of people who suffer from hunger. In this regard the Working Group recognized the relevant role being played by the World Bank and IMF in the context of the poverty reduction strategy papers, which were useful tools for achieving poverty eradication and development (E/CN.4/2002/28/Rev.1, para. 105 (a)).

Millennium Development Goals

44. The Working Group has recognized that the Millennium Development Goals represent a measurable set of human development objectives, the attainment of which is critical for building a more humane, inclusive, equitable and sustainable world, and that the timely attainment of the Goals is critical for the progressive realization of the right to development (E/CN.4/2005/25, para. 50). It is agreed that the implementation of the Millennium Declaration and attainment of other international development goals as identified in the outcomes of United Nations conferences and the Millennium Development Goals will contribute to the progressive realization of the right to development (E/CN.4/2004/23 and Corr.1, para. 43 (g)).

45. The Working Group emphasized the need to employ a multipronged approach, at both national and international levels, to continuously address the constraints to the attainment of the Millennium Development Goals, strengthen institutional capacities, bridge the information gaps and address the accountability failures to implement the Goals and to give them the necessary local content and national ownership (E/CN.4/2005/25, para. 51).

46. In this regard, the Working Group recognized that Millennium Development Goal 8, with its focus on international cooperation, is a framework compatible with international responsibilities contained in the Declaration, and that, furthermore, it implies significant international roles not only for developed and developing States, but also for other relevant global entities, notably international financial institutions, business corporations, the media and networks of non-governmental organizations. Relevant international human rights institutions, such as human rights treaty bodies, the special procedures of the Commission on Human Rights and the United Nations High Commissioner for Human Rights, have a responsibility, within their respective mandates, to work with Governments and their international trade, finance and development partners in order to ensure coherence between their undertakings in these areas and national human rights obligations in general, particularly with regard to the right to development. The Working Group was of the opinion that all country reports on the Millennium Development Goals should include information

on Goal 8 from the perspective of the right to development (E/CN.4/2006/26, paras. 36, 43 and 72).

Official development assistance

47. The Working Group recognized the value in exploring innovative sources of finance, provided that those sources did not unduly burden developing countries and, reaffirming the commitment on official development assistance (ODA), urged developed countries that had not done so to make concrete efforts towards the targets of 0.7 per cent of their gross national income (GNI) for ODA to developing countries and 0.15 to 0.2 per cent of their GNI to the least developed countries and encouraged developing countries to build on progress achieved in ensuring that ODA is used effectively to help meet development goals and targets (E/CN.4/2002/28/Rev.1, paras. 100 (c) and (d)). The Working Group also urged all concerned to recognize the importance of considering an increase in net transfers to developing countries that encompasses all types of external financial assistance, such as ODA, multilateral and bilateral loans, grants and debt relief, as well as of improving market access for the developing countries (E/CN.4/2005/25, para. 54 (b))

48. The Working Group stressed that aid is not an end in itself, but rather a necessary instrument for reaching the Millennium Development Goals where they could not be met by national means alone. The periodic evaluation of aid, from the perspective of the right to development, required:

(a) Ensuring that ODA policies are guided by human rights in general, and the right to development in particular, as well as poverty reduction objectives;

(b) Following guidelines on ODA for aid effectiveness, applicable to both donor and partner countries, such as the Paris Declaration on Aid Effectiveness, particularly the requirement that ODA be more predictable and harmonized;

(c) Identifying, formulating and establishing accountability for and ownership by each party of their respective commitments within the framework of a partnership and in the context of good governance and respect for human rights;

(d) National ownership of State commitments in partnerships for development, requiring the implementation of effective anti-corruption programmes at all levels that eliminate misuse of aid and meet human development objectives;

(e) Achieving positive net levels of ODA, irrespective of requirements of emergency aid and aid for purposes of national security;

(f) Effective progress by many developed countries in their commitments to achieve the target of 0.7 per cent of their gross national product (GNP) to ODA by 2015, and the need to explore other sources of financing as recommended in the Monterrey Consensus (E/CN.4/2006/26, para. 45).

Trade

49. The Working Group recognized the importance of fair trade and the need to enlarge opportunities for developing countries in the global economy and that further development of a rule-based, open and non-discriminatory trading system was also vital for the implementation of the right to development. The Working Group stressed that incorporating underlying principles of the right to development

into trade relations contributes to fulfilling the commitments to governance, equity and transparency in the financial monetary and trading system and to open, equitable, rule-based, predictable and non-discriminatory multilateral trading and financial systems (see E/CN.4/2006/26, paras. 46-48). Appropriate measures are needed to enable developing countries to effectively participate in and benefit from an open, equitable, rules-based, predictable and non-discriminatory multilateral trading system (E/CN.4/2004/23 and Corr.1, para. 43 (j)).

50. The Working Group agreed that there is a need to address market access for developing countries, including in agriculture, services and non-agricultural products, in particular those of interest to developing countries. A desirable pace of meaningful trade liberalization, including in areas under negotiations, the implementation of commitments on implementation-related issues and concerns, the review of special and differential treatment provisions with a view to strengthening them and making them more precise, effective and operational, the avoidance of new forms of protectionism, and the advancement of capacity-building and technical assistance for developing countries were important issues in making progress towards the effective implementation of the right to development (E/CN.4/2002/28/Rev.1, para. 100 (e)).

51. At its seventh session, the Working Group reaffirmed the central importance of the development dimension in every aspect of the Doha Work Programme within the negotiations of the World Trade Organization and welcomed the commitment of all States to making it a meaningful reality, in terms both of the results of the negotiations on market access and rule-making, and of the specific development-related issues set out in the Ministerial Declaration adopted at the negotiations in Hong Kong in 2005. The Working Group also recognized the importance of the successful completion of the Doha round of trade negotiations for building an environment conducive to the realization of the right to development and identified the substantial progress achieved in the Doha round with respect to agriculture, intellectual property and public health, liberalizing trade in services, special and differential treatment and trade-related capacity-building as positive steps in making the global trade regime more compatible with the right to development. Overcoming supply-side constraints on capacity to trade, such as those relating to physical infrastructure, education and skills training, was a major challenge facing developing countries, especially the least developed, which required support targeted on aid for trade reform (E/CN.4/2006/26, paras. 47 and 48).

52. At its fifth session the Working Group concluded that there was a need to pursue social impact assessments in the areas of trade and development, at both the national and international levels, that would include the right to development and to consider introducing and strengthening human rights standards and principles in undertaking impact assessments of trade and development rules and policies at both national and international levels. Such an approach was necessary in identifying those complementary measures that might be required to address adverse consequences of both national and international trade and development policy interventions. The Working Group stressed that there was also a need for tools to support an adequate approach and methodology in undertaking human rights impact assessments for the right to development and that States should consider using impact assessments in the context of all the relevant international trade forums, including the Trade Policy Review Mechanism and future trade negotiations (E/CN.4/2005/25, paras. 52, 53 and 54 (e)).

53. At its sixth session the Working Group agreed that there was an urgent need to build national capacity, especially statistical capacities, through technical cooperation programmes to encourage the use of human rights impact assessments and other tools in guiding public policy at the national and international levels for the implementation of the right to development (E/CN.4/2005/25, paras. 53 and 54 (e)). In order to build the capacity of the developing countries to collect, analyse and interpret relevant statistical information, and to utilize the results for policy improvements, the Working Group encouraged development partners to provide the necessary training and other facilities for such capacity-building (E/CN.4/2006/26, para. 71).

Foreign direct investment

54. The Working Group has recognized that the right to development implies that foreign direct investment should contribute to local and national development in a responsible manner, that is, in ways that are conducive to social development, protect the environment and respect the rule of law and fiscal obligations in the host countries. The principles underlying the right to development further implies that all parties involved, that is, investors and recipient countries, have the responsibility to ensure that profit considerations do not crowd out human rights protections (E/CN.4/2006/26, para. 59).

Debt sustainability

55. An unsustainable debt burden and debt servicing are major obstacles for developing countries in achieving the Millennium Development Goals, meeting their obligations under the International Covenant on Economic, Social and Cultural Rights and in making progress in the realization of the right to development (E/CN.4/2006/26, para. 49).

56. The Working Group stressed that poverty reduction and the promotion and protection of human rights should be taken into consideration in finding solutions for debt sustainability and that arrangements to service national debt should take into account national priorities of human development and poverty reduction, consistent with human rights obligations (E/CN.4/2006/26, para. 50).

57. Recognizing that there is a need for enhanced initiatives by creditors to alleviate the debt burden as a contribution to the realization of the right to development, the Working Group recommended that donor countries and international financial institutions should consider additional ways, including appropriate debt swap measures, to promote debt sustainability for both the heavily indebted poor countries and other developing countries. The Heavily Indebted Poor Country Initiative and other forms of debt relief should be additional to bilateral ODA flows, and developing countries should use resources released by debt relief as well as other sources of development finance in a manner that fully takes into account the interests of the poor and poverty reduction strategies (E/CN.4/2002/28/Rev.1, para. 100 (f)).

Access to medicines

58. In the opinion of the Working Group, intellectual property protections should not result in the weakening of the enjoyment of the human right to the highest attainable standard of health, or in limiting access to essential medicines. In this

regard, the Working Group stressed the importance of the Doha Declaration on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and Public Health and the decisions allowing for the exportation of pharmaceutical products under compulsory licence to address the public health problems afflicting many developing and least developed countries, especially those resulting from HIV/AIDS, malaria, tuberculosis and other epidemics, as well as other WTO decisions to extend the transition period for least developed countries in providing protection for trademarks, copyright, patents and other intellectual property under TRIPS (E/CN.4/2006/26, paras. 51-53).

Technology transfer

59. The Working Group considers that knowledge is a global public good and a key instrument for development (E/CN.4/2006/26, para. 51) and that there is a need to make the benefits of new technologies, especially information and communication technologies, available to all, as well as a need to bridge the digital divide (E/CN.4/2002/28/Rev.1, para. 100 (g)). The transfer of technology in development partnerships should respect the right of everyone to benefit from scientific progress and its applications. The protection of intellectual property should serve the valuable purpose of stimulating innovation through research and development, while minimizing its negative impact on individual or national access to such research and development. The Working Group also considered that bilateral or regional trade agreements should be consistent with TRIPS and other agreements of the World Trade Organization and should not impede the ability of States to make use of flexibilities and safeguards provided in TRIPS and other agreements reached by the World Trade Organization. Further reflection is needed, however, on the complex relationship between intellectual property and human rights, with a view to identifying criteria for the periodic evaluation of this aspect (E/CN.4/2006/26, paras. 51-54).

C. Specific groups and individuals

The role of women and the gender perspective

60. The Working Group has recognized "the importance of the role and the rights of women and the application of a gender perspective as a cross-cutting issue in the process of realizing the right to development" and the fact that there is a positive relationship between women's education and their equal participation in civil, political, economic, social and cultural activities of the community, and the promotion of the right to development (E/CN.4/2002/28/Rev.1, para. 105 (b)). Enhancing means for the active, full and meaningful participation of women in the process of formulating policies and strategies for attaining the Millennium Development Goals and the realization of the right to development is critically important. The Working Group has recommended that Member States apply a gender perspective to the implementation of the right to development and has agreed to seek to build and disseminate practical means, based on country experiences, to ensure the participation of women on equal terms with men in all fields related to the realization of the right to development (E/CN.4/2005/25, para. 54 (f)).

The rights of the child

61. The Working Group recognizes that there is a need for the integration of the rights of the child, boys and girls alike, in all policies and programmes and for ensuring the protection and promotion of those rights, especially in areas relating to health, education and the full development of their capacities (E/CN.4/2002/28/Rev.1, para. 105 (c)).

Persons living with HIV/AIDS and other communicable diseases

62. The Working Group has stressed that measures must be taken at the national and international levels to fight HIV/AIDS and other communicable diseases, taking into account ongoing efforts and programmes (E/CN.4/2002/28/Rev.1, para. 105 (d)).

Migrants

63. The Working Group recognizes that there is an important nexus between international migration and development and a need to deal with the challenges and opportunities that migration presents to countries of origin, destination and transit. International migration requires a holistic and coherent approach based on shared responsibility, which also and concurrently addresses the root causes and consequences of migration. International migration presents benefits, as well as challenges, to the global community. It is important to identify appropriate ways and means to maximize the development benefits and minimize the negative impacts of such migration in order to ensure respect for and protection of the human rights of migrants, migrant workers and members of their families (E/CN.4/2006/26, para. 61).

D. Measuring progress in the implementation of the right to development criteria

64. In 2005, the Working Group requested the high-level task force on the implementation of the right to development to suggest criteria for the periodic evaluation of global partnerships as identified in Millennium Development Goal 8 from the perspective of the right to development (E/CN.4/2005/25, para. 54 (i)). In 2009, the Working Group decided to expand the scope of the criteria beyond Millennium Development Goal 8 and aim at the implementation of the right to development, taking into account the evolving priorities of the international community (A/HRC/12/28, para. 43).[7] In 2010, the Working Group considered that further work should be undertaken at the intergovernmental level to adequately reflect both the national and international dimensions (A/HRC/15/23, para. 43).

65. In 2006, the Working Group adopted a set of provisional criteria, while recognizing that in addition to the areas mentioned explicitly in Millennium Development Goal 8, other areas of development partnerships were relevant to the effective implementation of the right to development, and should be covered by criteria for periodic evaluation of Goal 8, namely the private sector, comprising

[7] As requested by the Working Group in 2006 (E/CN.4/2006/26, para. 77), the high-level task force applied the criteria, on a pilot basis, for the period from 2007 to 2009, to selected partnerships (A/HRC/15/WG.2/TF/2/Add.1 and Corr.1). The purpose of the exercise was to operationalize and develop further the criteria, thus contributing to mainstreaming the right to development in policies and operational activities of relevant actors at the national, regional and international levels, including multilateral financial, trade and development institutions.

transnational corporations and foreign direct investment, global governance, migration and regional initiatives. In that context, the Working Group underlined that it wished to avoid creating new monitoring and reporting entities, that the criteria were primarily to be applied by the parties to a partnership, and had to be applied on a continuing basis, in order to achieve coherence and accountability. The Working Group added that additional criteria could be developed for specific issues on which partnerships already existed and operated (E/CN.4/2006/26, paras. 44, 55 and 66-68).

66. The high-level task force on the right to development was requested to apply the provisional criteria, on a pilot basis, to selected partnerships, with a view to operationalizing and progressively developing them, and thus contributing to mainstreaming the right to development in the policies and operational activities of relevant actors at the national, regional and international levels, including multilateral financial, trade and development institutions (E/CN.4/2006/26, para. 77).

67. The Working Group guided the task force in further developing and refining the criteria. It recognized, for example, the added value of developing concrete implementation criteria and applying them to the global partnership for development in order to facilitate the incorporation by current and future partnerships of essential elements of the right to development into their respective operational frameworks, thereby furthering the implementation of the right to development and, at the same time, providing the empirical basis for progressively developing and refining those criteria. There was a need for a deeper dialogue with the partnerships and the evaluation of additional partnerships dealing with other aspects of international cooperation, including trade, aid, debt, technology transfers, migration and other issues identified under Millennium Development Goal 8, in a step-by-step and an analytically rigorous manner (A/HRC/4/47, paras. 49 and 50).

68. The Working Group also found that the right to development criteria would benefit from further review of their structure, coverage of aspects of international cooperation identified under Millennium Development Goal 8 and of the methodology for their application. The current objective of such elaboration should be to enhance the criteria as a practical tool for evaluating global development partnerships from the perspective of the right to development, including by actors in the relevant partnerships themselves. The Working Group encouraged the high-level task force to provide a consistent mapping of the criteria and relevant checklists, viewing the latter as operational sub-criteria (A/HRC/4/47, para. 51).

69. In addition, the Working Group directed the high-level task force to consider the following partnerships and issues: the African Peer Review Mechanism; the Mutual Review of Development Effectiveness carried out by the Development Assistance Committee of the Economic Commission for Africa/Organization for Economic Cooperation and Development; the Paris Declaration on Aid Effectiveness; the Cotonou Agreement between African, Caribbean and Pacific countries and the European Union; the issue of access to essential medicines in developing countries (Target 8.E), including the work of the Intergovernmental Working Group on Public Health, Innovation and Intellectual Property, the Global Fund on HIV/AIDS, Tuberculosis and Malaria; the Special Programme for Research and Training in Tropical Diseases; and an invitation to the Southern Common Market (MERCOSUR) to consider entering a dialogue with the task force. The task

force was mandated to study the thematic issues of debt relief (Targets 8.B and D) with a view to engaging in a dialogue with the institutions responsible for the Heavily Indebted Poor Countries Initiative and the Multilateral Debt Relief Initiative and other institutions and procedures that address the issue of debt relief and transfer of technology (Target 8.F), including the idea of studying the Clean Development Mechanism and the Development Agenda of the World Intellectual Property Organization (A/HRC/9/17, para. 43) and the Bretton Woods institutions (A/HRC/12/28, para. 46).

70. In 2008, the Working Group, while discussing the workplan of the high-level task force, identified additional thematic and regional areas under Millennium Development Goal 8, including technology transfer, debt relief, international cooperation and other aspects, as suitable topics for examination by the task force (A/HRC/9/17, para. 38).[8]

71. The Working Group recommended that the criteria adopted by the high-level task force should (a) be analytically and methodologically rigorous; (b) provide empirically oriented tools to those involved in implementing development partnerships; and (c) cover Millennium Development Goal 8 and other aspects not covered by the task force (A/HRC/9/17, para. 42).

72. The Working Group agreed that the task force, in accordance with its workplan, should also ensure that due attention is given to other issues relevant to the right to development, including poverty and hunger, including in the context of climate change and the current global economic and financial crisis. The revised criteria and sub-criteria should address the essential features of the right to development, as defined in the Declaration on the Right to Development, in a comprehensive and coherent way, including priority concerns of the international community beyond those enumerated in Millennium Development Goal 8, and should serve the purposes set out in all relevant provisions of Human Rights Council resolution 9/3 (A/HRC/12/28, paras. 42 and 45).

73. In addition, the Working Group recommended that the task force draw on specialized expertise, including from academic institutions and relevant United Nations agencies and other relevant global organizations and the experience of countries in relation to the promotion of the realization of the right to development. It should also give due attention to the experience gained from the application of the provisional criteria to development partnerships and to the views expressed by Member States (A/HRC/12/28, para. 46).

[8] After the adoption of the conclusions and recommendations, several States and groups presented explanations of their positions with regard to the conclusions and recommendations. France (on behalf of the European Union) and Canada clarified that "other aspects" also included good governance, democracy and the rule of law at the domestic level. Cuba (on behalf of the Non-Aligned Movement) emphasized that "other aspects" referred to an ODA commitment of 0.7 per cent of gross national product, establishing a new international economic order and a fair economic system, as well as good governance and democracy at the international level, including in the functioning of international trade, financial and monetary institutions. Egypt, aligned with the Non-Aligned Movement, added that "other aspects", such as good governance, democracy and the rule of law, should apply at both the national and international levels (A/HRC/9/17, para. 37).

74. In 2010, the Working Group considered that further work should be undertaken at the intergovernmental level to adequately reflect both the national and international dimensions of the subject (A/HRC/15/23, para. 43).

E. Issues for the future

75. In 2005 and 2006, the Working Group adopted the following issues to guide its future work: (a) the issue of space for national economic policy in the implementation of the right to development; (b) measures and good practices to promote a participatory approach, based on human rights norms and principles, including gender perspective, in the allocation of social sector expenditures in public budgets; (c) examining the institutional experience, feasibility and sustainability of evolving social security nets and overall social development policies into entitlements consistent with the realization of the right to development; (d) exploring means of enhancing elements such as special and differential treatment provisions in making the international trade environment more responsive to the needs of implementing the right to development (E/CN.4/2005/25, para. 55); (e) continuing to consider the broader topic of Millennium Development Goal 8, which has not been exhausted, thereby focusing on other issues covered by this Goal, as identified but not elaborated upon by the high-level task force (for example, youth employment and landlocked and small island developing States); (f) focusing on topics identified by the task force as pertinent to Goal 8, but not covered by the targets enumerated therein (for example, migration, the role of private sector, global governance and regional initiatives); and (g) selecting a new topic, which is not related to Goal 8 (E/CN.4/2006/26, para. 78).

IV. Conclusions and recommendations

76. **An effective global partnership for development, underpinned by human rights-based policy coherence and coordination at all levels, is the best foundation for realizing the right to development.**

77. **As the United Nations commemorates the twenty-fifth anniversary of the United Nations Declaration on the Right to Development, new efforts are needed (a) to overcome political and polarized debate; (b) to mobilize support from a wide public constituency; and (c) to encourage international organizations to fully integrate all human rights, including the right to development, into their work.**